

940 CMR: OFFICE OF THE ATTORNEY GENERAL

940 CMR 32.00: DOMESTIC WORKERS

Section

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32.01: Purpose, Scope, and Other General Provisions

(1) Purpose. The purpose of 940 CMR 32.00 is to interpret, enforce, and effectuate the purposes of the Domestic Workers Bill of Rights Act, St. 2014, c. 148, as codified at M.G.L. c. 149, § 190.

(2) Scope. 940 CMR 32.00 applies to any individual who performs work of a domestic nature in a household, in accordance with M.G.L. c. 149, § 190(a).

(3) Benefits Maintained. Nothing in 940 CMR 32.00 shall affect any policy or practice of an employer which provides for greater, additional, or more generous wages, benefits, or working conditions to a domestic worker than those required under 940 CMR 32.00 or by M.G.L. c. 149, § 190.

32.02: Definitions

As used in 940 CMR 32.00, the following terms shall, unless the context clearly requires otherwise, have the following meanings:

Banking of Hours. A practice where an employer pays a domestic worker for a pay period, or fraction thereof, but provides no opportunity to work or provides the opportunity to work fewer

hours than the domestic worker was paid to work, and requires the domestic worker to either repay the compensation or make up the time without compensation in a later pay period.

Childcare on a Casual, Intermittent and Irregular Basis. Employment involving childcare that is scheduled to be and, in fact, is less than 16 hours per week. Employment of 16 hours or more per week shall still be deemed to be on a “casual, intermittent and irregular basis” if the excess hours of employment are without regularity or are for irregular or intermittent periods, such as for shorter school vacation periods, but not for instance, on a regular basis during school recess for the summer. Childcare on a casual, intermittent and irregular basis may include the performance of some household work not related to caring for children, provided that such work is incidental to the childcare (i.e., does not exceed 20% of the total hours worked).

Domestic Worker. An individual who performs services for an employer for wage, remuneration, or other compensation, as further defined by M.G.L. c. 149, § 148B, to provide any service of a domestic nature within a household, except: (i) any individual who provides services to persons with disabilities or seniors under the MassHealth personal care attendant program or any successor program under M.G.L. c. 118E, §§ 70 through 75; and (ii) any individual whose vocation is not childcare and whose services for the employer primarily consist of childcare on a casual, intermittent and irregular basis for a family or household member.

Employ. To suffer or permit to work.

Employer. One or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers who employ a domestic worker to provide services within a household, whether the individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy or receivers have an ownership interest in the household or not. For instance, a homeowner who hires a live-in housekeeper to work in the homeowner’s residence is the employer of the housekeeper. Whereas, the owner of a cleaning company who contracts with homeowners to provide house cleaning services is the employer of the house cleaners who perform that domestic work. An employer shall not include: (i) any staffing agency, employment agency or placement agency

licensed or registered pursuant to M.G.L. c. 140; or (ii) any individual for whom a personal care attendant provides services under the MassHealth personal care attendant program or any successor program under M.G.L. c. 118E, §§ 70 through 75.

Forced Services. As defined under M.G.L. c. 265, § 49, forced services refer to services performed or provided by a person that are obtained or maintained by another person who: (i) causes or threatens to cause serious harm to any person; (ii) physically restrains or threatens to physically restrain another person; (iii) abuses or threatens to abuse the law or legal process; (iv) knowingly destroys, conceals, removes, confiscates or possesses any actual or purported passport or other immigration document, or any other actual or purported government identification document, of another person; (v) engages in extortion under M.G.L. c. 265, § 25; or (vi) causes or threatens to cause financial harm to any person.

Job-Protected Leave. Any instance of absence from work or relief from duty following which a domestic worker has a right to return to work and an employer cannot take any adverse action as a result of the domestic worker's absence from work or relief from duty.

Rest Period. A period of time with complete freedom from all duties and during which a domestic worker may either leave the employer's premises or stay on the employer's premises for purely personal pursuits. If an employer agrees to pay a domestic worker for his or her rest period, such payment shall be considered vacation time and pay under M.G.L. c. 149, § 148.

Shared Services. Services provided by a domestic worker to more than one employer that are intentionally coordinated by the employers. For example, in the context of childcare services, shared services are commonly referred to as a "nanny share."

Sleep Period. A regularly scheduled sleeping time of not more than eight hours, during which the employer provides adequate, decent, and sanitary sleeping quarters and the domestic worker can enjoy sleep, uninterrupted by duties.

Vocation. A career or occupation in which or for which an individual has significant experience or training or is the individual's calling.

Week. A seven-day calendar week beginning on Sunday and ending on Saturday.

Working Time. Compensable time that includes all time during which a domestic worker is required to be on the employer's premises or to be on duty and any time worked before or beyond the end of the normal scheduled shift to complete work. Working time shall include meal periods, rest periods, and sleep periods unless: (i) a domestic worker is free to leave the employer's premises and use the time for the domestic worker's sole use and benefit and is completely relieved of all work-related duties; or (ii) a domestic worker on duty for 24 consecutive hours or more enters into a written agreement with the employer pursuant to 940 CMR 32.03(2) in a manner described under 940 CMR 32.04(3) to exclude such periods from working time.

32.03: Working Conditions

(1) Rest Periods.

(a) An employer who employs a domestic worker for 40 hours a week or more shall provide a rest period of at least 24 consecutive hours in each calendar week and a rest period of at least 48 consecutive hours during each calendar month. The 24 consecutive hours of rest that must be provided per week may, at the discretion of the employer, during one such week, run concurrently with the minimum 48 consecutive hours that must be provided by an employer at least once per calendar month.

(b) Where possible, a rest period should accommodate religious worship, including the domestic worker's attendance at a place of worship, if any.

(c) When a domestic worker is employed for 40 hours a week or more, the domestic worker and the employer may enter into a written agreement where the domestic worker agrees to work

during a previously designated rest period. Such written agreement to work during a previously-designated rest period shall: (i) be in a language easily understood by the domestic worker; (ii) be entered into prior to performance of services during the previously designated rest period; (iii) specify the rest period or periods which the domestic worker agrees to work; and (iv) be signed or acknowledged (whether in writing or by means of electronic communication) by the domestic worker and the employer.

(d) Rest periods, whether paid or unpaid, shall be considered job-protected leave. Rest periods shall be in addition to any job-protected leave to which a domestic worker may have a right under the Family Medical Leave Act, 29 U.S.C. § 2601 et seq., the Parental Leave Act, M.G.L. c. 149, § 105D, the Domestic Violence Leave Act, M.G.L. c. 149, § 52E, the Small Necessities Leave Act, M.G.L. c. 149, § 52D and 940 C.M.R. 20.00, the Earned Sick Time Law, M.G.L. c. 149, §§ 148C & 148D and 940 CMR 33.00, and any other applicable leave laws.

(e) If an employer provides a paid rest period, the rest period shall be considered vacation time and pay under M.G.L. c. 149, § 148.

(f) When a domestic worker who does not reside on the employer's premises is on duty for less than 24 consecutive hours, the employer shall pay the domestic worker for all such time as working time pursuant to 454 CMR 27.02.

(2) Exclusions from Working Time. When a domestic worker is required to be on duty for a period of 24 consecutive hours or more, all meal periods, rest periods, and sleep periods shall constitute working time, unless otherwise provided by written agreement. The domestic worker and the employer may enter into a written agreement to exclude meal periods, rest periods, and sleep periods from working time. Such written agreement to exclude meal periods, rest periods, and sleep periods from working time shall: (i) be in a language easily understood by the domestic worker; (ii) be entered into prior to performance of services; (iii) specify the meal periods, if any, which the domestic worker agrees are not working time; (iv) specify rest periods, if any, which the domestic worker agrees are not working time; (v) specify sleep periods, if any, which the

domestic worker agrees are not working time; and (vi) be signed or acknowledged (whether in writing or by means of electronic communication) by the domestic worker and the employer.

(3) Overtime. A domestic worker shall be compensated at the overtime rate for all hours worked over 40 per week pursuant to M.G.L. c. 151, § 1A, regardless of whether all the hours worked were of a domestic nature in the case of domestic workers who work for an employer in both residential and commercial settings.

(4) Banking of Hours. No employer shall require banking of hours. A domestic worker may voluntarily agree to banking of hours provided: (i) the time to be made up is less than 24 hours; and (ii) the agreement is in writing in a language easily understood by the domestic worker and is made prior to the performance of the make-up work. If the employer and domestic worker agree to banking of hours, and the time made up in a particular week brings the worker's total hours over 40, then the employer shall ensure that the domestic worker is compensated at the overtime rate pursuant to 940 CMR 32.03(3) and M.G.L. c. 151, § 1A, for all hours in excess of 40 that the domestic worker works.

(5) Deductions.

(a) Agreements. No deductions for food, beverages, or lodging shall be made from a domestic worker's wages without the domestic worker's agreement, provided that such agreement: (i) is in writing, in a language easily understood by the domestic worker, and made prior to the time when deductions are incurred; (ii) specifies the particular deductions to which the domestic worker agrees to consent; and (iii) is signed or acknowledged (whether in writing or by means of electronic communication) by the domestic worker and the employer.

(b) Food and Beverages.

(i) An employer may deduct from a domestic worker's wages an amount for food and beverages actually provided to the domestic worker, provided that: (1) the food and beverages are voluntarily and freely chosen by the domestic worker; (2) the domestic worker can easily bring

and prepare meals on the premises; and (3) working conditions caused by the employer's or another household member's dietary restrictions or other related preferences do not prevent a domestic worker from storing, preparing, or consuming meals of his or her preference.

(ii) No employer shall deduct from the wage of a domestic worker a sum in excess of the amounts per day set forth for food and beverages actually furnished to the domestic worker, as prescribed by 454 CMR 27.05(3) and promulgated pursuant to M.G.L. c. 151, said maximum daily deductions as of January 16, 2015, being \$1.25 for breakfast, \$2.25 for lunch and \$2.25 for dinner.

(iii) No employer shall exceed the number of deductions per day permitted by 454 CMR 27.05(3) as of January 16, 2015, said limits permitting a deduction of one meal for a domestic worker working three hours or more, a deduction of two meals for a domestic worker working two meal periods or eight hours of work, and a deduction of three meals for a domestic worker if lodging is provided or if special permission is granted by the Director of the Department of Labor Standards.

(c) Lodging.

(i) An employer may deduct from a domestic worker's wages an amount for lodging actually provided to the domestic worker, provided that: (1) the lodging is voluntarily and freely chosen by the domestic worker; and (2) the lodging complies with the state sanitary code contained in 105 CMR 410.000: Minimum Standards of Fitness for Human Habitation State Sanitary Code: Chapter II or other regulations that may be promulgated under the authority of the Department of Public Health or successor agency under M.G.L. c. 111.

(ii) No employer shall deduct from the wage of a domestic worker a sum for lodging if the employer does not require that the domestic worker reside on the employer's premises or in a particular location.

(iii) No employer shall deduct from the wage of a domestic worker a sum for lodging in excess of the amounts per day set forth for lodging voluntarily and freely chosen and actually desired and used by the domestic worker, as prescribed by 454 CMR 27.05(2) and promulgated pursuant to M.G.L. c. 151, as of January 16, 2015, said maximum deduction being \$35.00 per week for a room occupied by one person, \$30.00 per week for a room occupied by two persons, and \$25.00 per week for a room occupied by three or more persons.

(d) Other Deductions. No other deductions shall be made from a domestic worker's wages other than for specifically named, identified, and agreed-upon purposes, goods or services required or expressly authorized by law.

(e) An employer's dissatisfaction with the quality of a domestic worker's services shall not be a basis for withholding, or taking deductions from, a domestic worker's compensation.

(6) Privacy.

(a) An employer shall not monitor or record, in any manner, a domestic worker's use of restroom or bathing facilities, sleeping or private living quarters, or any activities associated with the worker's dressing, undressing, or changing clothes.

(b) An employer shall not restrict or interfere with a domestic worker's private communications, unless the domestic worker's private communications significantly interfere with the domestic worker's performance of expected duties. An employer may establish reasonable restrictions on a domestic worker's private communications during working time.

(c) An employer shall not monitor a domestic worker's private communications.

(d) An employer shall not take any of the domestic worker's documents or other personal effects.

(7) Trafficking Prohibited. An employer shall not engage in any conduct which constitutes forced services, trafficking of persons for sexual servitude, or trafficking of persons for forced services under M.G.L. c. 265, §§ 49, 50, & 51, respectively.

(8) Communications. If the employer requires that a domestic worker reside in the employer's premises or other particular location, the employer shall provide the domestic worker with the ability and reasonable opportunity to access telephone and internet services and permit the domestic worker to send and receive communications by text message, social media, electronic or regular mail and telephone, without the employer's interference. If the employer has telephone or internet services, the employer shall provide reasonable access to the telephone and/or internet service without charge to the domestic worker. If the employer does not have telephone and/or internet services, the employer shall provide the domestic worker with a reasonable opportunity to access telephone and/or internet service at another location at the domestic worker's expense.

(9) Termination.

(a) If a domestic worker resides in the employer's household or at a location required by the employer and the employer terminates employment without cause, the employer shall: (i) provide written notice and at least 30 days of lodging, either on-site or in comparable off-site conditions; or (ii) provide written notice and severance pay in an amount equivalent to the domestic worker's average earnings for two weeks of employment. The average weekly earnings for a domestic worker who has been employed for less than two weeks shall be arrived at by extrapolating from an average day's wages. If the employer chooses to provide either off-site lodging or severance, the employer shall allow the employee at least 24 hours to vacate the employer's household.

(b) If a domestic worker resides in the employer's household or at a location required by the employer, no advance notice or severance payment shall be required where the employer provides a good faith allegation, in writing before or at the time of the termination, with reasonable basis and belief and without reckless disregard or willful ignorance of the truth that the domestic worker has abused, neglected or caused any other harmful conduct against the

employer, members of the employer's family, or individuals residing in the employer's household.

(c) If a domestic worker resides in the employer's household or in a location required by the employer and termination is for cause relating to conduct other than that described in 940 CMR 32.03(9)(b), the employer shall provide: (i) advance written notice; and (ii) a reasonable opportunity to find other lodging of no less than 48 hours.

(d) A domestic worker involuntarily terminated by the employer shall be paid in full on the last day of employment as required under G.L. c. 149, § 148.

32.04: Notice and Recordkeeping

(1) Written Evaluation. A domestic worker may request a written evaluation of his or her work performance from an employer after three months of employment and annually thereafter. A domestic worker may inspect and dispute any written evaluation as provided under M.G.L. c. 149, § 52C.

(2) Recordkeeping. An employer who employs a domestic worker shall keep a true and accurate record of wages and hours for three years in accordance with M.G.L. c. 151, § 15.

(3) Written Agreement. An employer who employs a domestic worker for 16 hours or more per week shall provide to the domestic worker, and retain for a period of three years from the date when services were performed, signed and dated by both the worker and employer, a written agreement in a language or languages easily understood by both the worker and employer(s), regarding the following information:

(a) the rate of pay, including overtime and additional compensation for added duties or multilingual skills;

(b) working hours, including meal periods and other time off;

(c) if applicable, the provisions for days of rest, sick days, vacation days, personal days, holidays, transportation, health insurance, severance and yearly raises and whether or not earned vacation days, personal days, holidays, severance, transportation and health insurance costs are paid or reimbursed;

(d) any fees or other costs, including costs for meals and lodging;

(e) the responsibilities, including regularity, associated with the job;

(f) the process for raising and addressing grievances and additional compensation if new duties are added;

(g) the right to collect workers' compensation benefits if injured on the job;

(h) if applicable, the circumstances under which the employer may enter the domestic worker's designated living space on the employer's premises;

(i) the required notice of employment termination by the employer and by the domestic worker;

(j) any additional benefits afforded to the domestic worker by the employer; and

(k) for live-in domestic workers only, a description of what the employer deems as cause for purposes of immediate termination and removal within 48 hours from the employer's home without severance pay. An employer need not list all conduct that would constitute cause for termination but shall make a good faith effort to describe the circumstances that would result in the worker's loss of lodging and severance.

(4) Time Sheet.

- (a) An employer who employs a domestic worker for 16 hours or more a week shall provide a time sheet, in hard copy or electronic format, to the domestic worker at least once every two weeks, recording the hours of compensable time worked each day in the preceding two weeks, in a language easily understood by the domestic worker.
- (b) An employer must provide a reasonable opportunity for a domestic worker to acknowledge agreement with the employer's recording of the compensable time worked each day, by signing or acknowledging the time sheets either in writing or by some electronic method. The employer shall provide the domestic worker with a copy (whether in paper or electronic form) of the time sheet signed or otherwise acknowledged by both the employer and domestic worker.
- (c) If the domestic worker disagrees with the employer's records of the hours actually worked on any given day, the employer shall provide the domestic worker with the opportunity to note the number of hours he or she believes to have been worked on any given day, on that time sheet alongside the employer's record of hours worked.
- (d) Any signing or acknowledgement of the time sheet by the domestic worker shall be done without prejudice to the domestic worker's rights to payment of wages for compensable time actually worked.
- (e) In any dispute concerning the hours worked, the domestic worker's failure or refusal to sign a time sheet shall not relieve the employer of the obligation to pay wages in the manner required by M.G.L. c. 149, M.G.L. c. 151, or 940 CMR 32.00.
- (5) An employer's obligation to provide the information required under 940 CMR 32.04(3)(a) through (k) shall occur prior to the domestic worker's performance of any services.
- (6) Prior to the domestic worker's performance of any services, an employer shall provide a domestic worker with a notice that contains all applicable Massachusetts and federal laws that apply to the employment of domestic workers.

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(7) An employer who employs a domestic worker for 16 hours or more a week and fails to comply with the record-keeping requirements of 940 CMR 32.04, including the maintenance of time sheets, notices, written evaluations, and written agreements, shall have violated paragraph (3) of M.G.L. c. 151, § 19, and may be subject to a civil citation or order as provided in M.G.L. c. 149, § 27C.

(8) An employer may satisfy the notice of rights requirements under 940 CMR 32.04(6) by providing a domestic worker with a physical copy (or if the domestic worker prefers, an electronic copy) in the worker's native language (if available on the website) of the Attorney General's Notice of Domestic Workers Rights available on the Attorney General's website at www.mass.gov/ago/dw.

(9) An employer shall furnish all records maintained relating to a domestic worker to the Attorney General upon demand.

32.05: Additional Provisions

(1) Shared Services. If shared services are provided by a domestic worker, each employer shall be jointly and severally liable for their obligations under M.G.L. c. 149, § 190 and 940 CMR 32.00. Every employer who has engaged a domestic worker to provide shared services shall sign all written agreements affecting the parties and, if the total employment equals or exceeds 16 hours, every employer shall sign and be a party to an agreement that provides the information required under 940 CMR 32.04(3)(a) through (k) .

(2) Retaliation Prohibited. No domestic worker shall be penalized or suffer any adverse action in any way by an employer as a result of any action on the part of domestic worker to seek to exercise the worker's rights under 940 CMR 32.00 or M.G.L. c. 149, § 190, pursuant to M.G.L. c. 149, § 148A.

(3) Enforcement by the Attorney General. The Attorney General may enforce the obligations set forth in M.G.L. c. 149, § 190 and 940 CMR 32.00 by seeking injunctive or declaratory relief in

Superior Court. Pursuant to M.G.L. c. 149, § 27C, the Attorney General may also issue a written warning or a civil citation to an employer, requiring that an infraction be rectified, that restitution be made to the domestic worker, if any, and/or that a civil penalty be paid to the Commonwealth. Civil citations may be appealed to the Division of Administrative Law Appeals, as provided by M.G.L. c. 149, § 27C.

(4) Private Right of Action. A domestic worker claiming to be aggrieved by a violation of M.G.L. c. 149, § 190, may, 90 days after the filing of a complaint with the Attorney General, or sooner if the Attorney General assents in writing, and within three years after the violation, institute and prosecute in the domestic worker's own name and on the domestic worker's own behalf, or for the domestic worker and for others similarly situated, a civil action for injunctive relief, for any damages incurred, and for any lost wages and other benefits. An employee so aggrieved who prevails in such an action shall be awarded treble damages, as liquidated damages, for any lost wages and other benefits and shall also be awarded the costs of the litigation and reasonable attorneys' fees.

32.06: Severability

If any provision of 940 CMR 32.00 or the application of any provision of 940 CMR 32.00 to any person or circumstance is held invalid, the validity of the remainder of 940 CMR 32.00 and the applicability of such provision to other persons or circumstances shall not be affected.

REGULATORY AUTHORITY

940 CMR 32.00: M.G.L. c. 149, § 190(o).